

M. L. asks the Utah Labor Commission to reconsider its prior decision denying a portion of Mr. L.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Ann. §63-46b-13.

ISSUES PRESENTED

Mr. L. contends that the Commission's previous decision is contrary to the preponderance of medical evidence. Mr. L. also questions the Commission's refusal to enter default against Southern Utah University for late filing, by one day, of its Answer to Mr. L.'s Application For Hearing.

DISCUSSION

With respect to Mr. L.'s contention that the medical evidence supports his claim for benefits, the Commission acknowledges a difference of medical opinion in this matter. However, after reviewing all the medical evidence once again, the Commission remains persuaded that the preponderance of medical evidence supports Judge Eblen's decision.

Mr. L. also points out an apparent discrepancy between the Commission's practice of dismissing untimely motions for review in other cases, while allowing Southern Utah University to file an untimely answer in this case. There is a legal basis for the Commission's different treatment of the two situations. The timely filing of a motion for review is a prerequisite to the Commission's jurisdiction over a case. If a timely motion for review is not filed, the Commission has no power or authority over the case and has no choice but to dismiss the case. In contrast, the untimely filing of an Answer does not affect the Commission's underlying jurisdiction and the Commission retains the power to determine if dismissal is appropriate. In this case, the Commission concludes that Southern Utah University's one-day delay in filing its Answer does not warrant the extreme sanction of default.

ORDER

In light of the foregoing, the Commission reaffirms its previous decision and denies Mr. L.'s motion for review. It is so ordered.

Dated this 6TH day of January, 2004.

R. Lee Ellertson, Commissioner